

14 July 2014

Ms Jacqui Thorpe  
Acting General Manager – Retail Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne Vic 3001

via email: AERInquiry@aer.gov.au

**Australian Energy Regulator – Submission on the Draft amendments to the AER Compliance procedures and guidelines – published by the AER on 13 June 2014**

Dear Ms Thorpe,

Thank you for the opportunity to make a submission in response to the AER's publication of the Draft amendments to the AER Compliance procedures and guidelines.

The ENA understands that the purpose of the consultation is to provide interested parties the opportunity to comment on the AER's proposed refinements to the reporting frameworks and to improve the quality of reports.

**Key message**

The ENA supports amendments to the Compliance procedures and guidelines that reduce the regulatory burden both on network businesses and the AER resulting in lower costs being passed on to consumers as required under both the National Electricity and the National Gas Objective.

In this review the AER proposes to improve the efficiency and effectiveness of the reporting process primarily by removing some reporting obligations and replacing the current immediate reporting framework (24 hour and five day) for Type 1 obligations with a slightly longer, more practical, Type 1 reporting timeframe. The proposed amendments also clarify some of the reporting requirements. The ENA supports these proposed amendments.

The ENA has addressed each of the key areas under review and more detailed comments are shown in Attachment A.

ENA member companies recognise the AER's requirement to undertake compliance reporting as part of their regulator obligations and Network businesses are keen to work constructively with AER staff to support a cost efficient and effective reporting regime.

If you have any questions please do not hesitate to contact me on 02 6272 1510 or Jim Bain on 02 6272 1516.

Yours sincerely,



John Bradley  
Chief Executive Officer

Attachment A – comments on Key areas for review

Ref No.	Summary of Area for review	AER comments	ENA comments
3.1	<p>Whether the current classification of provisions as type 1, 2 or 3, which determines the frequency of reports to the AER, remains appropriate, and whether obligations captured by the Guidelines could be more efficiently monitored through other means.</p> <p>Whether the time allowed for submission of reports remains appropriate, particularly for type 1 obligations which are currently reported within 24 hours.</p>	<p>The AER have proposed amending the classification of Type 1, 2 and 3 obligations and to the timing of reports on type 1 obligations.</p> <p>No amendments are proposed for the timing of reports for type 2 and type 3 obligations.</p>	<p>The ENA strongly support the removal of Section 66 of the Energy Retail Law obligations. We also strongly support the proposed removal of Type 2 and Type 3 reporting obligations for distributors (except for failure to notify of planned interruptions).</p> <p>While the timing for Type 2 and Type 3 reports remains unchanged, the timing for Type 1 reports has been changed from 24 hours, 5 days and six monthly to 48 hours for life support obligations and de-energisation of customers for non-payment during extreme weather events and quarterly for all other Type 1 obligations. The ENA supports the additional time allowed for Type 1 reports, however our preference is for all Type 1 report information to be provided in the quarterly report.</p> <p>The ENA notes that the 48 hours makes no allowance for weekends and public holidays. We propose that the 48 hours be replaced by “two business days”.</p> <p>The ENA proposes that the cost of reporting and sign-off would be reduced if the quarterly report and the annual report are aligned. The April-June Type 1 report should be submitted with the annual report which must be submitted by the 31 August, instead of the current proposal to submit the Type 1 report by the 31 July. The currently proposed requirement is to submit two reports Type 1 and the Type 2/3 within one month of each other. Noting that the details of a breach of any of the major Type 1 obligations would</p>

			<p>have already been reported to the AER.</p> <p>In clause 3.2.2 the ENA proposes that the words “the breach occurring” should be replaced with “the entity becoming aware or is notified of the breach”.</p> <p>The ENA proposes that clause 3.3.1 should be amended to include “it is accepted that some of the information may be preliminary and require qualification”. It is also proposed that clause 3.3.1(e) be deleted and this information included in the quarterly report. This allows time for the reasons behind the breach to be considered and appropriate rectification action to be developed.</p>
3.2	<p>Whether the requirement that all reports to the AER are ultimately signed by the Chief Executive Officer of the retailer or distributor appropriately reflects responsibility for compliance within all regulated businesses, and whether aggregated reports should be permitted for related regulated entities.</p>	<p>The AER are not convinced that changes should be made to signatories of reports and are not proposing any changes to the existing process.</p>	<p>The ENA disagrees that the CEO should be the only authorised signatory. The ENA considers that a more practical approach would be to provide an option for the Company Secretary (or other senior executive delegated for the purpose) to be an alternate signatory to the report, particularly if immediate Type 1 reports are required.</p>
3.3	<p>Whether the information that retailers and distributors are required to include in their reports is clear, and meaningful to an assessment of compliance.</p>	<p>The basic content of compliance reports will remain unchanged. However, the Guidelines will be clarified to make AER expectations more explicit in completing reports.</p>	<p>The ENA agrees with the AER position. However, the ENA considers that any proposed amendments to the reporting template should also be subject to consultation.</p> <p>The ENA does not support the continued requirement for distributors to provide information regarding the financial impact of breaches on customers unless that information is readily available.</p>
3.4	<p>Whether it is necessary or appropriate for the Guidelines to explain or interpret the obligations imposed under relevant provisions of the Retail Law and Rules, or to establish benchmarks for compliance with</p>	<p>While the AER have considered the application of a materiality threshold to reporting requirements they have rejected changes in this area and are not proposing amendments.</p>	<p>The ENA somewhat understands the position being put by the AER re provision of guidance re compliance. However it is still considered that the co-operative nature of the compliance framework as endorsed by the AER and industry could be improved by the provision in a targeted way of AER</p>

<p>those obligations for reporting purposes or otherwise.</p>	<p>In relation to further guidance around the obligations under the Retail Law and Rules the AER's view is that it is up to businesses to identify and meet their obligations under the Retail Law and Rules and is not proposing amendments.</p>	<p>advice with respect to compliance expectations, including potentially some consideration of thresholds for mass market obligations.</p> <p>Policy makers draft the Law and Rules to implement high level policy requirements. The drafting does not always provide an unambiguous and operational practical basis for industry processes. Sometimes industry interpretation is required. Where the AER can assist achieving a consistent approach across participants, this can only lead to a more effective and efficient regime.</p> <p>Alternatively, the ENA considers that where reporting requirements are unclear and subject to interpretation, for example where obligations are subject to "best" or "reasonable" endeavours, compliance should be monitored through an alternative approach.</p>
<p>3.5 The AER proposes to concentrate on receiving reports by email and will remove the facility for reports to be submitted by post and telephone.</p>		<p>The ENA agrees with the AER's proposed amendment.</p>
<p>3.5 Under the current Guideline the AER only require submission of reports where breaches have occurred. They are proposing that a report showing a 'nil' return should be provided even if no breaches have occurred.</p>		<p>While this imposes additional costs on businesses the ENA consider this is not material and accepts the AER's proposed amendment.</p>
<p>Other issues not identified by the AER</p>		